

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 511 of 2014 (o&m)

Date of decision : April 7, 2014

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Babu Singh and another

.....Appellants

Versus

Sukhjant Singh and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Deepak Aggarwal, Advocate for the appellants.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The appellants have filed this regular second appeal against the judgment dated 30.9.2009 passed by the Additional Civil Judge (Senior Division), Phul and the judgment dated 25.9.2013 passed by the Additional District Judge, Bathinda, whereby the appeal against the judgment of the trial Court was dismissed.

The claim of the plaintiff, Bhajan Kaur was that she and defendants no. 2 & 3 Kartar Kaur and Bhagwan Kaur are real sisters and daughters of deceased Gulab Kaur widow of Damman Singh. Gulab Kaur executed registered Will on 23.5.1961 in favour of plaintiff and defendants no. 2 and 3 , whereby she bequeathed her

property in their favour. The revenue authorities sanctioned mutation No. 16584 dated 22.9.2000 pertaining to the estate of Gulab Kaur in favour of defendant no.1 on the basis of forged and fabricated Will dated 7.6.1993 by ignoring the registered Will dated 23.5.1961. Pursuant to the will dated 7.6.1993, the defendant no.1 alienated landed property measuring 66 kanals 14 marlas to Sukhdev Singh defendant no.4 vide sale deed no. 4231 dated 26.12.2002. The said sale deed was null and void in view of the registered Will dated 23.5.1961.

Before the trial Court, the defendant no.1 appeared and took the stand that alleged Will dated 23.5.1961 was not the result of sound and disposing state of mind of Gulab Kaur. The alleged Will was executed under the influence of Hardam Singh son of Sucha Singh. Gulab Kaur executed a Will dated 7.6.1993 in favour of defendant no.1 in the presence of attesting witnesses in her sound and disposing state of mind. Defendant no.1 inherited the estate of Gulab Kaur on the basis of said Will dated 7.6.1993. The Will dated 7.6.1993 was executed by Gulab Kaur in lieu of services rendered by defendant no.1 and his mother Kartar Kaur in old age of Gulab Kaur. The plaintiff Bhajan Kaur and her son Jarnail Singh were not cordial with Gulab Kaur. On the basis of Will dated 7.6.1993, mutation No. 16584 was validly sanctioned in favour of defendant no.1. Plaintiff and defendants no. 2 & 3 had no title or interest with the disputed property. The plaintiff had no right to challenge the sale deed made by defendant no. 1 in favour of defendant no.4.

Defendant no.4, Sukhdev Singh appeared and filed his written statement taking a stand that Gulab Kaur executed the Will dated 7.6.1993 in favour of defendant no.1 on the basis of which disputed property was mutated in his favoaur vide mutation no. 16584. The defendant no.1 has been in possession being owner since the sanctioning of said mutation. The will dated 23.5.1961 is forged and fabricated document. The defendant no. 4 had purchased the land measuring 44 kanals 10 marlas for Rs. 8, 33,000/- vide sale deed no. 4231 dated 26.12.2002 and he was in possession of the property being owner since the time of the sale deed. The following issues were framed by the trial Court:

- 1)Whether Gulab Kaur executed the registered Will dated 23.5.1961 in favour of plaintiff and defendant no. 2 and 3? OPP
- 2)Whether Gulab Kaur executed the registered Will dated 7.6.1993 in favour of defendant no.1 Sukhjant Singh ? OPD-1
- 3)Whether plaintiff is entitled to declaration as prayed for? OPP
- 4)Whether plaintiff is entitled to possession as prayed for? OPP
- 5)Whether suit of the plaintiff is not maintainable in the present form? OPD
- 6)Whether plaintiff has no cause of action to file the present suit? OPD

7) Whether plaintiff has filed this suit on the basis of wrong facts? OPD

8) Whether plaintiff has filed the suit within limitation? OPP

9) Whether defendants are entitled to special costs as prayed for? OPD

10) Whether the plaintiff no. 4 is bona fide purchaser for valuable consideration on the basis of sale deed no. 4231 dated 16.12.2002? OPD-4.

The onus to prove issues no. 1, 3, 4 and 8 was on the plaintiff and onus to prove issue no. 2 was on the defendant no.1. They were taken up together being inter connected and inter related

Gulab Kaur was married to Damman Singh. She inherited the estate of Damman Singh on his death prior to the year 1956. The plaintiff Bhajan Kaur and defendants no. 2 and 3 were born to Gulab Kaur out of sons of Damman Singh. After the death of Damman Singh, Gulab Kaur solemnized marriage with Hardam Singh. Before the trial Court, counsel for defendant no.1 admitted the execution of Will dated 23.5.1961 (Ex. P-1) by Gulab Kaur in favour of plaintiff and defendants no. 2 & 3. PW-2, Pritam Singh was the attesting witness of the Will Ex. P-1 executed by Gulab Kaur in favour of plaintiff and defendants no. 2 & 3. PW-3 Sukhdev Singh merely testified that Gulab Kaur resided with her brother Dalip Singh and proved Form D-1 vide Ex.P2 in this regard at the same time both

the witnesses PW-1 Bhajan Kaur and PW-2 Pritam Singh admitted the execution of sale deed by Gulab Kaur in favour of defendant no.1. Plaintiff PW-1 Bhajan Kaur stated during her cross-examination that Gulab Kaur executed a registered Will in the year 1987 in favour of her son Jarnail Singh and Sukhjant Singh son of Kartar Kaur wife of Karnail Singh. Thereafter the said Will was cancelled by Gulab Kaur and she executed the new Will in favour of Sukhjant Singh on 7.6.1993 in the presence of Sukhdev Singh Namberdar, attesting witness. Gulab Kaur used to append her thumb impressions on the documents and the Sukhjant Singh was the exclusive owner in possession of the disputed property after the death of Gulab Kaur and thereafter Sukhjant Singh alienated the entire property to defendant no. 4 Sukhdev Singh. Before the trial Court, it was admitted by the plaintiff as well as PW-2 Pritam Singh that Gulab Kaur used to cultivate her land herself after the death of Hardam Singh and she was not suffering from any ailment but died due to old age.

It was admitted between the parties that Karnail Singh son of Gurdial Singh husband of Bhagwan Kaur defendant no. 3 had inherited the estate of Hardam Singh by way of gift deed. Once the execution of the gift deed was admitted between the parties, the property of Hardam Singh with whom Gulab Kaur had solemnized kareva marriage had been given to son of defendant no.3. In view of the above facts, the defendants proved the execution of the Will dated 7.6.1993 (Ex. D-1). DW-1 Sukhdev Singh, attesting witness

duly proved the execution of the Will Ex. D1 executed by Gulab Kaur in favour of defendant no. 1. He testified that Will Ex. D1 was scribed by Gurmail Singh on the instructions of Gulab Kaur in his presence and in the presence of Harnek Singh. Gurmail Singh read over and explained the contents of the Will to Gulab Kaur and she put her thumb impression on the Will in token of correctness. Said Will Ex. D-1 was got registered by Gulab Kaur from Sub Registrar on 7.6.1993. DW-2 Harnek Singh another attesting witness also corroborated the execution of the Will Ex. D-1 by Gulab Kaur. DW-3 Sukhjant Singh testified on the terms of his case. The trial Court examined the terms of the Will Ex. D-1 which revealed that Gulab Kaur cancelled the earlier registered Will No. 220 dated 10.9.1987 vide which she had bequeathed her estate in favour of Jarnail Singh and Sukhjant Singh in equal share. Jarnail Singh is the son of Bhajan Kaur. The clear recital in the Will Ex. D1 regarding the cancellation and revocation of Will No. 220 dated 10.9.1987 in favour of Jarnail Singh goes to show that deceased Gulab Kaur did not want to bequeath any share to Jarnail Singh son of Bhajan Kaur. PW-1 Bhajan Kaur admitted the execution and revocation of the Will no. 220 dated 10.9.1987 by Gulab Kaur in favour of Jarnail Singh and Sukhjant Singh. Ex. D-1 was the last Will of the testator and was required to hold the way. The gift deed executed by Hardam Singh in favour of Karnail Singh son of Bhagwan Kaur was not being challenged by the plaintiff in the suit. In the background of execution

of Ex. D-1 and gift deed, the trial Court came to conclusion that Ex. P-1 was cancelled by way of executing Will Ex. D-1 in favour of Sukhjant Singh. The findings of the above said issues was returned against the plaintiff. The suit was dismissed and it was held that Sukhjant Singh inherited the estate of Gulab Kaur on the basis of registered Will Ex. D-1. Sukhjant Singh was the exclusive owner in possession of the disputed property mutated in his favour vide mutation no. 16584. Vide sale deed Ex. D-4, he alienated the property measuring 44 kanals 10 marlas out of the disputed property in favour of Sukhdev Singh, defendant no.4 on 26.12.2002. Defendant no.1 had every right to alienate the disputed property being exclusive owner in possession of the said property. Accordingly defendant no.4 Sukhdev Singh is declared as bona fide purchaser of the disputed property for valuable consideration.

On appeal filed by the legal heirs of the plaintiff, the same was dismissed by the Additional District Judge, Bathinda and the detailed reasons have been given in paragraph 19 of the judgment. The same have been reproduced as under:

19.The dispute is regarding inheritance of Gulab Kaur. Gulab Kaur was mother of original plaintiff Bhajan Kaur and defendants Kartar Kaur and Bhagwan Kaur. The claim of the plaintiff is based on Will dated 23.5.1961 as well as natural succession. Of course, the plaintiff has tried to prove Will dated 23.5.1961 but the defendant

Sukhjant Singh has claimed Will dated 7.6.1993. In this Will, there is reference of earlier Will dated 10.9.1987 executed by Gulab Kaur in favour of Jarnail Singh and defendant Sukhjant Singh. Admittedly, there is no reference of Will dated 23.5.1961 but the Will dated 23.5.1961 was already cancelled by execution of Will dated 10.9.1987. Therefore, there was no purpose to make reference of Will dated 23.5.1961. Defendant has examined DW-1 Sukhdev Singh who was attesting witness of the Will dated 7.6.1993 propounded by defendant Sukhjant Singh. He has fully proved the Will. This Will is also a registered document. Moreover, plaintiff Bhajan Kaur in her cross-examination has admitted that Hardam Singh gifted his land to Karnail Singh son of Gurdial Singh. She has admitted that Gulab Kaur executed Will in the year 1987 in favour of her son Jarnail Singh and defendant Sukhjant Singh who is son of her sister Kartar Kaur. She has admitted that Hardam Singh transferred land to Karnail Singh son of his other sister Bhagwan Kaur. She has admitted that Gulab Kaur got cancelled the Will executed in the year 1987 in favor of Jarnail Singh and

Sukhjant Singh. She has admitted that Gulab Kaur executed a Will dated 7.6.1993 in favor of only Sukhjant Singh. This will was attested by Sukhdev Singh Lambardar and Harnek Singh. In this way the plaintiff herself has admitted the Will of the year 1987 and the Will executed by Gulab Kaur on 7.6.1993. From all angles due execution of the Will dated 7.6.1993 is proved in favour of defendant Sukhjant Singh. Admittedly, the mutation has been sanctioned on the basis of Will dated 7.6.1993 executed by Gulab Kaur in favour of Sukhjant Singh. Sukhjant Singh has further alienated the land to defendant Sukhdev Singh.”

The claim of the plaintiff was based on Will dated 23.5.1961. The defendant no.1 Sukhjant Singh claimed the right on the property on the basis of the Will dated 7.6.1993. The execution of this Will was duly proved by examining the witnesses. In the Will dated 7.6.1993, there is reference of earlier will dated 10.9.1987 executed by Gulab Kaur in favour of Jarnail Singh and Sukhjant Singh. There is no reference of Will dated 23.5.1961. Moreover by execution of Will dated 10.9.1987, the Will dated 23.5.1961 stood cancelled. The execution of the will Ex. D-1 was duly proved as it was attested by Sukhdev Singh Lambardar and Harnek Singh. Since the plaintiff had herself admitted the Will for the year 1987, finding of fact recorded by both the Courts below that earlier Will executed by

Gulab Kaur dated 23.5.1961 stood cancelled does not require any reconsideration.

In view of all that has been discussed above, the judgments of the Courts below do not require any interference and they are upheld. The present regular second appeal is hereby dismissed.

April 7, 2014
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(RITU BAHRI)
JUDGE